

September 5, 2002

Carol A. Murray, Commissioner  
New Hampshire Department of Transportation  
John O. Morton Building  
1 Hazen Drive, P.O. Box 483  
Concord, NH 03302-0483

Re: Recommended Mitigation Package for I-93

Dear Commissioner Murray:

The purpose of this letter is to clarify EPA's position regarding mitigation for impacts associated with the widening of I-93 in order to assist you in producing a Draft Environmental Impact Statement for public review as soon as possible.

EPA continues to support the widening of I-93 in concert with adequate mitigation for the significant impacts it would cause, and as part of a broader strategy--including firm commitments to future rail service--for ensuring that solutions to the traffic congestion in this corridor are sustainable over the long term. In view of the high priority of this project to the State of New Hampshire, we strongly support and are pleased to continue our commitment to participating in the streamlined environmental review process. We also continue to believe in the value and importance of involving the public in the streamlined review at an early stage.

In keeping with that commitment, we urge you to carefully consider the mitigation recommendations in this letter and include them in the Draft EIS for public comment. We are convinced that doing so will facilitate public acceptance of the project and thereby expedite the environmental review and permitting process, a goal we all share.

In considering the issue of mitigation, EPA has devoted considerable efforts to evaluating the project's impacts that are subject to the agency's regulations under Section 404 of the Clean Water Act. As you know, in addition to filling 70 acres of wetlands, the project will lead to very substantial development in many towns near I-93: at least 41,000 new residents will move to the study area near I-93 over the next 20 years, resulting in development of at least 50,000-100,000 acres of land. While this large amount of development may be environmentally sustainable if done in locations that do not harm aquatic resources or fragment valuable habitat, it is unlikely that ecologically sound development will occur without substantial efforts to protect land and provide technical assistance to the affected towns. Current State and Federal wetland regulations and typical zoning rules have generally not been effective in reducing habitat fragmentation and protecting drinking water supplies in southern New Hampshire. Development can legally take place in and adjacent to streams, ponds, and wetlands in a manner that isolates the waterbody and greatly reduces the value of the resource. Examples of this type

of development are numerous, whether in Nashua where protecting the drinking water supply from such threats has proven difficult, or Londonderry where more than half of the town's open space has been developed in the last fifteen years and only two large blocks remain, or in many other towns. During the past two years when we have been discussing mitigation for I-93, three of the large unfragmented blocks that EPA and others have identified as possible mitigation areas have been or are soon to be partly developed: Dubes Pond, Spruce Pond, and Hunt Pond.

In developing recommendations for mitigation, we have been guided by several key principles. First, in view of the fact that there are limited funds to support mitigation, it is crucial that the mitigation projects be cost effective and ecologically sound, with a strong environmental return for every dollar spent. Second, while the mitigation generally should occur as close to the impact areas as possible, the higher priority is that the mitigation, including any land conservation, be of high ecological value, regardless of where it takes place within the area affected by the highway expansion. Third, land conservation which adds parcels to other protected land to create large blocks of landscape and wildlife habitat is of greater ecological value than protecting isolated smaller tracts of land. Fourth, mitigation should be of a scale commensurate with the impacts of the project and consistent with what is done for major highway projects with significant impacts in New England.

Consistent with these principles, EPA recommends that the mitigation package for I-93 include the following elements, the details for which are included in the attachment to this letter:

1. Parcels already selected by NHDOT within the five towns immediately adjacent to I-93.<sup>1</sup>
2. Parcels that protect the ecological integrity and/or drinking water supply for nearby communities which will experience significant growth as a result of the project (such as the Lake Massabesic watershed).
3. Funds for LCHIP or a similar program to be used over the next 5-10 years to protect key parcels in the towns predicted to experience significant growth as a result of the project.
4. A technical assistance program to promote local land use planning efforts consistent with smart growth principles among 23 communities in the south central region of New Hampshire for a period of five years.

We believe this mitigation plan, as outlined above and detailed in the attachment, is appropriate

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<sup>1</sup> With respect to land conservation in the five towns, it is unfortunate that parcels selected for protection thus far, while of importance to the towns, do not have high ecological value. We include NHDOT's recommendations for mitigation in the five towns in our proposed plan due to the commitments NHDOT has made to the parcels in these towns; however, we urge DOT to work with those towns to continue to look for valuable lands for preservation, and if such parcels are identified, to add them to the mitigation plan.

in scope and cost. Relative to the magnitude of the impacts predicted to result from widening I-93, the scale of this mitigation plan is reasonable and practicable. As Attachment II to this letter demonstrates, this plan is well within or even less than the scale of mitigation required for other major highways in New Hampshire, including the Manchester Airport Access Road, the Nashua Circumferential Highway, and the Conway Bypass. The total mitigation plan outlined above would be within the typical range of mitigation costs which is 10 to 20 percent of overall project costs.

Other NHDOT projects have included mitigation plans of a similar ratio of wetland loss to acres protected even though the development impacts of those projects will affect a much smaller area than I-93. For example, the Manchester Airport Access Road plans to fill 13 acres of wetlands, will cause development and associated impacts in primarily 2 or 3 towns and NHDOT proposes to protect 880 acres of land, including some large tracts of habitat. As proposed, the widening of I-93 will fill over 70 acres of wetlands, cause significant development in 20 to 30 towns and yet NHDOT's proposal to date will only protect 650 acres of generally low value habitat. We therefore believe it is crucial for NHDOT to reconsider its current position on mitigation, especially in view of the goal of achieving a permittable project in an expeditious time frame.

We are concerned that in spite of the good faith efforts of the agencies to work cooperatively in the streamlining process, NHDOT in recent months has consistently disregarded most of the comments EPA and other natural resource agencies have made on the mitigation plan. In addition, DOT has not encouraged environmental groups to participate in the process thus far, and has not reached out to many towns that will experience significant growth as a result of the project. These concerns leave us with little hope that this process can move forward at the pace we hoped. We strongly urge NHDOT to take a more proactive and inclusive approach to this project to help the process proceed in a timely manner. We encourage NHDOT to adopt the mitigation plan we developed with New Hampshire resource agencies, present it to the public for comment, invite environmental groups to the table, and work closely with all of the communities impacted by the project.

We also want to reiterate our interest in ensuring that progress is made on analyzing transit options in the corridor. We are pleased to hear that funding for a transit study in the I-93 corridor is in the Senate version of DOT's '03 budget, but we remain concerned about whether the underlying foundations for conducting such a study are in place. In your letter of September 21, 2001 to the I-93 Board of Directors on alternatives to be carried forward in the draft EIS, you indicated that NHDOT, in cooperation with the Massachusetts EOTC, would work together on a corridor study of mass transit options. Further, you indicated that the proposed transit project milestones would be incorporated into a binding Memorandum of Agreement that would be executed by the I-93 partnering agencies. On February 13, 2002, you wrote to Secretary Sullivan with a draft scope of work and a MOA for the Transit Investment Study. This draft MOA was to be signed solely by NHDOT and MA EOTC. We would appreciate learning whether the MOA been signed, and request that a copy be provided to EPA and other members of the Board. In addition, since the intent of your September 21, 2001, letter was to have the I-93 Board sign an

MOA on transit, we would appreciate your circulating the MOA to the Board for our consideration. Please let me know if we can be of any assistance in this effort.

We urge you to consider the recommendations and concerns expressed in this letter and to move forward with publication of the draft EIS incorporating our mitigation proposal so that the public has the opportunity for a comprehensive review of this project as soon as possible.

Sincerely,

Robert W. Varney  
Regional Administrator

Attachment

cc: Mamie Parker, Regional Director, USF&WS  
Michael Bartlett, New England Field Office Supervisor, USF&WS  
Colonel Thomas L. Koning, District Engineer,  
New England District US Army Corp. of Engineers  
James McConaha, Director, NH Division of Historical Resources  
Jeffrey H. Taylor, Director, NH Office of State Planning  
Dana Bisbee, Acting Commissioner, NH Dept. of Environmental Services  
Wayne E. Vetter, Executive Director, NH Fish and Game Dept.  
Kathleen O. Laffey, Division Administrator, Federal Highway Administration  
Woodbury P. Fogg, Director, NH Office of Emergency Management  
Kevin Merli, Regional Director, FEMA  
Richard Doyle, Regional Administrator, Volpe National Transportation Systems Center  
Nancy Girard, Conservation Law Foundation  
Josh Irwin, NH Public Interest Research Group  
Jon Barrows, Sierra Club  
Jane Difley, Society for the Protection of New Hampshire Forests  
Richard Moore, NH Audubon